

86 Ill. Adm. Code 130.310 states that food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. (This is a PLR.)

April 14, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see www.revenue.state.il.us/Laws/regs/part1200/), is in response to your letter of October 25, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

We are writing in request of your opinion as to the sales tax rate that the taxpayer should be charging their retail customers; the higher non-food rate or the reduced food rate. Taxpayer has been charging the higher rate on all retail sales, however, they have become aware that a large percentage of their sales should possibly be at the reduced rate.

Statement of Facts

AAA has two locations in CITY. Neither location has any facilities (e.g., table, chairs) for on premises consumption. Sales of popcorn, candies, ice cream and beverages are made to walk in customers at both locations. We understand that the sales made to those walk in customers making non-bulk purchases would be at the higher rate due to the serving sizes and the fact that the items are prepared for 'immediate consumption'.

The question as to the reduced rate is for customers which are not 'walk in'. A fair percentage of AAA sales are from orders that are mailed or phoned in. These are large orders of their products that individuals and corporations place to use as gifts for various occasions (i.e., holidays). These orders are maintained separately from their 'walk in' customer cash registers. These orders are mostly sold on credit to the customer.

We feel that these 'gift' or bulk orders of larger quantities of our product would be sales that do not constitute sales intended for 'immediate consumption'. We would equate AAA sale of multiple packages of some confectionary (i.e., canisters of popcorn, gift arrangements of nuts or candies, etc.) to the sale of food items by a grocery store.

Customers of AAA would be ordering them, holding on to them until they distribute them as gifts. There most likely would be a substantial delay from the time of sale to the actual consumption of the product for these types of purchases.

Requested Ruling

Would not AAA have sales at both rates: 'Walk in' sales at the higher rate and 'gift' sales at the reduced rate?

Authorities Supporting Requested Ruling

Illinois Regulation, 86 Ill. Adm. Code 130.310(b)(3)

General Information Letter, ST 95-0472-GIL, November 20, 1995
IL-TAXRPTR19981019469

General Information Letter, ST 02-0057-GIL, March 5, 2002

Private Letter Ruling, ST 89-0111-PLR, February 10, 1989 IL-TAXRPTR19981229111

General Information Letter, ST 98-0295-GIL, August 26, 1998
IL-TAXRPTR19981223068

Private Letter Ruling, ST 87-0450-PLR, June 19, 1987, IL-TAXRPTR19990118450

Authorities Contrary to the Requested Ruling

Illinois Regulation, 86 Ill. Adm. Code 130.310(b)(2)(B)

Private Letter Ruling, ST 92-0640-PLR, December 08, 1992 IL- TAXRPTR19981113852

Illinois Sales Tax Letter Ruling, ST 98-0007-PLR, July 29, 1998 IL-TAXRPTR19991118193

Representations

To the best of the knowledge of both the taxpayer and the representative, the Illinois Department of Revenue (IDOR) has not previously ruled on the same or a similar issue for the taxpayer or a predecessor. Neither has the taxpayer or representative previously submitted the same or similar issue to the IDOR but withdrew it before a letter ruling was issued.

There appears in this ruling request no trade secret information to which the taxpayer would request be deleted from the publicly disseminated version of the private letter ruling.

The Retailers' Occupation Tax Act imposes a tax upon "persons engaged in the business of selling at retail tangible personal property, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for public commercial exhibition." 35 ILCS

120/2. The state rate is 6.25% plus applicable local taxes for general merchandise and 1% plus applicable local taxes for items that qualify as food, drugs or medical appliances.

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding tax on food, medicine and medical appliances under the Retailers' Occupation Tax Act. As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See Section 130.310(b)(1).

Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310 (b)(5).

The appropriate rate of tax for food items sold is determined by the character of the retail establishment as well as the nature of the sales. Retailers providing seating or facilities for on-premises consumption of food incur tax at the high rate on all food sales including sales of food items that would otherwise qualify for the reduced rate (i.e., grocery type items). Where establishments sell both food which has been prepared for immediate consumption and grocery-type items and also provide facilities for on-premises consumption, the lower rate of tax can be charged on the grocery-type items if the selling areas are partitioned and served by separate means of collection. See Section 130.310(b)(3). The partition need not be an impenetrable barrier. However, there must be some partition of the area which is selling grocery-type items from the area selling immediate consumption items in which the facilities for on-premises consumption are located.

86 Ill. Adm. Code 130.310 states that food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. Retailers who sell food which they do not prepare in any way, are not selling food for immediate consumption, i.e., pre-packaged candy bars, snacks, chips, ice cream, unless that food is to be consumed on the retailer's premises. It is presumed that retailers who sell food prepared for immediate consumption in individual single-sized servings will sell all such items for consumption without substantive delay.

If there are no facilities for on-premises consumption of food, retailers must then determine whether the majority of food sales are bulk sales or sales for immediate consumption. If more than 50% of all food sales are for immediate consumption then retailers must charge high rate on all food sales. If more than 50% of all food sales are in bulk (i.e., grocery type items) then all food sales are at the low rate with the exception of hot food, food prepared for immediate consumption and high rate items such as soft drinks, specifically set out in the regulations.

All of the sales should be high rate if more than 50% of all food sales are for immediate consumption. This appears to be the case in this instance, therefore, your client is properly collecting the high rate on all of its sales.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Associate Counsel

MAJ:msk
Enc.